

**JAN 24 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK JOSEPH GOBLE, aka Mark James  
Goble,

Defendant - Appellant.

No. 01-30427

D.C. No. CR-00-00126-JDS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Jack D. Shanstrom, District Judge, Presiding

Argued and Submitted November 4, 2002  
Boise, Idaho

Before: TROTT, T.G. NELSON and THOMAS, Circuit Judges

Mark J. Goble appeals the district court's denial of his motion to suppress evidence seized from his motor home. He also appeals his sentence. We conclude

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

that the district court correctly denied Goble's motion to suppress.<sup>1</sup> Although the issue is a close one, the facts that Deputy O'Toole asked, and did not order, Goble to answer questions, and that law enforcement did not pull Goble over but simply summoned him from his already-parked mobile home, weigh sufficiently in favor of a voluntary encounter to allow us to affirm.<sup>2</sup> Accordingly, we affirm the conviction.

The Government conceded that it failed to offer sufficient proof to justify the two-point enhancement to Goble's sentence under United States Sentencing Guideline § 2D1.1(b)(5) (2000). Accordingly, we vacate Goble's sentence and remand for plenary re-sentencing.

**THE CONVICTION IS AFFIRMED; THE SENTENCE IS VACATED  
AND REMANDED.**

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<sup>1</sup> We review the district court's decision de novo. *United States v. Summers*, 268 F.3d 683, 686 (9th Cir. 2001).

<sup>2</sup> See *United States v. Kim*, 25 F.3d 1426, 1430-31 (9th Cir. 1994); cf. *United States v. Kerr*, 817 F.2d 1384, 1386 (9th Cir. 1987) (finding a stop where the police officer stopped the defendant while in motion).